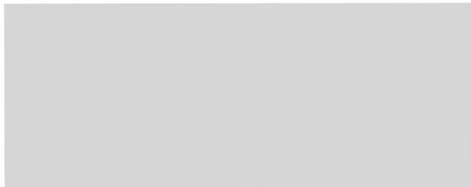




U.S. Citizenship
and Immigration
Services

(b)(6)



MAY 11 2015

DATE:

FILE #:

PETITION RECEIPT #:

IN RE:

Petitioner:

PETITION:

Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter returned for entry of a new decision.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition for the petitioner's failure to establish that she suffered substantial physical or mental abuse as a result of the qualifying domestic violence offense committed against her by her ex-husband.

Applicable Law

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

- (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
- (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
- (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
- (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States[.]

Domestic violence is listed as a qualifying criminal activity in clause (iii) of section 101(a)(15)(U) of the Act.

As used in section 101(a)(15)(U)(i)(I), the term *physical or mental* abuse is defined at 8 C.F.R. § 214.14(a)(8) as "injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim."

The eligibility requirements for U nonimmigrant classification are further explicated in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level[.]

* * *

In addition, the regulation at 8 C.F.R. § 214.14(c)(4), prescribes the evidentiary standards and burden of proof in these proceedings:

The burden shall be on the petitioner to demonstrate eligibility for U-1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by [U.S. Citizenship and Immigration Services (USCIS)]. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have initially entered the United States in May 1992, without inspection, admission or parole. In January 1996, the petitioner departed the United States and reentered approximately two months later, without inspection, admission or parole. In January 2006, the petitioner departed the United States and reentered on March 9, 2006,¹ without inspection, admission or parole. The petitioner filed the instant Petition for U Nonimmigrant Status (Form I-918 U petition) with an accompanying U Nonimmigrant Status Certification (Form I-918 Supplement B) on August 14, 2013. On the same day, the petitioner also

¹ The petitioner provides two different dates for her reentry without inspection, admission or parole, in 2006; February 2006 and March 9, 2006.

filed an Application for Advance Permission to Enter as Nonimmigrant (Form I-192). On April 14, 2013, the director issued a Request for Evidence (RFE) that the petitioner suffered substantial physical or mental abuse as a result of her victimization. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the Form I-918 U petition and Form I-192. The petitioner timely appealed the denial of the Form I-918 U petition.

On appeal, the petitioner asserts that as a victim of domestic violence, she suffered substantial physical and mental abuse, and she continues to suffer from depression and post-traumatic stress disorder (PTSD).

Claimed Criminal Activity

In her declarations, the petitioner recounted that shortly after her first entry into the United States, she began dating her ex-husband and during the time that they were together, he physically, mentally and sexually abused her. After they divorced, the petitioner and her ex-husband shared custody of their daughter, but there were times when her ex-husband would not return their daughter to the petitioner. On October 7, 2002, the petitioner attempted to get their daughter back after her ex-husband did not return her to the petitioner for several months. The petitioner, her sister and brother-in-law drove to the babysitter where her ex-husband had left their daughter. The babysitter did not allow the petitioner to take their daughter until the petitioner's ex-husband arrived. When her ex-husband arrived with his brother, she confronted him and told him that she wanted their daughter back. As the petitioner and her ex-husband were each holding onto one of their daughter's hands, they started arguing, he hit her in the face and she fell on the ground. Her ex-husband began arguing at her brother-in-law and the petitioner took that opportunity to grab their daughter and put her in the car. The petitioner's ex-husband hit the car windows and kicked the wheels of her vehicle, and when they drove off, he and his brother began chasing them in their vehicle. Her ex-husband finally stopped following them and they drove to the petitioner's sister's house. The petitioner's father was at her sister's house and when he heard what happened, he told them to go to the police station. About four hours after the incident, the petitioner went to the police station to file a report. She never heard from the police again but she "think[s]" they issued a no-contact order against her ex-husband.

The Form I-918 Supplement B that the petitioner submitted was signed by Prosecuting Attorney [REDACTED] Washington, Prosecuting Attorney's Office (certifying official), on February 19, 2013. The certifying official lists the criminal activity of which the petitioner was a victim at Part 3.1 as domestic violence. In Part 3.3, the certifying official refers to the Revised Code of Washington (R.C.W.) §§ 9A.36.041 and 10.99.020, domestic violence assault in the fourth degree, as the criminal activity that was investigated or prosecuted. At Part 3.5, which asks the certifying official to briefly describe the criminal activity being investigated or prosecuted, he indicated that on October 7, 2002, the petitioner, a victim of domestic violence, was slapped "on the face with an open hand" by her ex-husband. At Part 3.6, which asks for a description of any known or documented injury to the petitioner, the certifying official indicated that the petitioner "suffered physical injuries as a result of this assault," and she "reported to police that the slap on her face was painful and caused her to stagger back."

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we withdraw the director's decision to deny the petitioner's Form I-918 U petition.

Substantial Physical or Mental Abuse

The petitioner submitted two statements describing the years of abuse suffered by her at the hands of her ex-husband, the impact of his abuse on her mental health, and the facts of her victimization during the incident in October 2002. In her declarations, the petitioner claimed that in the beginning of their relationship, her ex-husband was nice and attentive and after about a year of dating, she discovered that she was pregnant. They got married in [REDACTED] 1994, when she was five months pregnant, and moved in with each other. Soon after they got married, her ex-husband began to physically, mentally and sexually abuse her. Her ex-husband hit her about once a month, called her insulting names, forced her to have sex, and cheated on her with other women. They divorced in August 1995, but continued to live together. About four years after their divorce, the petitioner "got tired of [her ex-husband's] threats and his physical, mental, and sexual abuse" and left him. However, even after they separated the petitioner would take their daughter to visit her ex-husband every few weeks, but he would use their daughter to manipulate the petitioner and there were times that he would not return their daughter to the petitioner.

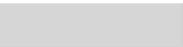
In her declaration dated July 1, 2014, the petitioner claims that the day after her ex-husband assaulted her in October 2002, she was in a lot of pain and had problems moving her neck, but she did not go the doctor because she "was so overwhelmed about the whole situation" and she could not afford to seek medical treatment. In her declaration dated July 18, 2013, the petitioner claims that she was very afraid of her ex-husband after this incident. She claims that her "emotional and psychological problems worsened dramatically," she had difficulty sleeping, she had nightmares, she lost her appetite, she isolated herself and did not leave the house, and she cried easily. A few months after the incident, she went to the doctor and the doctor told her that she was depressed. The doctor prescribed her an anti-depressant medication and referred her to a psychologist. She went to therapy a few times but it was difficult to make appointments with her work schedule, and she did not have health insurance and could not afford the cost. The record contains evidence of the petitioner's visits to a clinic for symptoms of depression. The petitioner continued to be monitored by her doctor for management of her anti-depressant medication but after about six months, she started to feel better and when she met her current husband, she was able to manage her symptoms with his support. However, in February 2014, she "felt very down again and hopeless," and went back to her doctor. The doctor diagnosed the petitioner with depression and anxiety, again prescribed her anti-depressants, and referred her to therapy. She was told by her doctor that she "may need to stay on medication permanently to battle [her] depression." She also continues to have problems sleeping. The petitioner started seeing a therapist in June 2014. The record contains evidence that the petitioner was suffering from symptoms of depression in 2014 and was prescribed an anti-depressant.

In a statement dated October 29, 2014, Ms. [REDACTED], a licensed marriage and family therapist, indicates that the petitioner has symptoms of depression and PTSD related “to the years she lived with an incredibly abusive partner, despite the fact that the relationship with her abuser ended more than 12 years ago. The fact that she has continued to suffer from recurring symptoms after more than 12 years only underscores the severity of the trauma she experienced during her relationship with her abusive partner.” Ms. [REDACTED] referred the petitioner to receive traumatic stress counseling based on her moderately-severe symptoms of PTSD, which include hypervigilance, nightmares, flashbacks, avoidance, and high anxiety.

On appeal, the petitioner claims that the director erred in concluding that the petitioner failed to meet her burden of proof in showing that she had suffered substantial physical or mental abuse as a result of having been the victim of domestic violence. Although the certified criminal activity occurred over 12 years ago, the mental health documents show that the petitioner continues to suffer substantial mental abuse as demonstrated by her ongoing symptoms of depression and PTSD. A preponderance of the relevant evidence demonstrates the resultant substantial mental abuse from the certified criminal activity. The evidence in the record, including the incident report, medical and mental health documents, and statements from the petitioner provide probative and credible details of the certified crime as well as other related domestic violence activities perpetrated against her by her ex-husband, who was also the perpetrator of the certified criminal activity. The evidence documents a history of domestic violence perpetrated by the petitioner’s ex-husband against the petitioner, as well as the nature and duration of the petitioner’s resulting injuries to her physical and mental soundness. *See* 8 C.F.R. § 214.14(b)(1) (factors relevant to a determination of substantial abuse include the duration of the infliction of the harm and serious harm to the mental soundness of the victim, including aggravation of pre-existing conditions). The totality of the evidence demonstrates that the petitioner suffered substantial mental abuse as required under section 101(a)(15)(U)(i)(I) of the Act. The director’s contrary determination is withdrawn.

Admissibility

Although the petitioner has established her statutory eligibility for U nonimmigrant classification, the petition may not be approved because she remains inadmissible to the United States and her waiver application (Form I-192) was denied. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a Form I-918 U petition, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For U nonimmigrant status in particular, the regulations at 8 C.F.R §§ 212.17, 214.14(c)(2)(iv) require the filing of a Form I-192 in order to waive a ground of inadmissibility. Here, the director denied the petitioner’s Form I-192 solely on the basis of the denial of the Form I-918 U petition. *See Decision of the Director*, dated September 26, 2014. We have no jurisdiction to review the denial of a Form I-192 submitted in connection with a Form I-918 U petition. 8 C.F.R. § 212.17(b)(3). However, because the ground for denial of the petitioner’s



Form I-918 U petition has been overcome, we will return the matter to the director for reconsideration of the Form I-192.

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has been met as to the petitioner's statutory eligibility for U nonimmigrant classification. The petition is not approvable, however, because the petitioner remains inadmissible to the United States and her waiver application was denied. Because the sole basis for denial of the petitioner's waiver application has been overcome on appeal, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The director's September 26, 2014, decision is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 and issuance of a new decision on the Form I-918 U petition, which if adverse to the petitioner shall be certified to the Administrative Appeals Office for review.